taking judicial notice of, or making any presumption in regard to, the foreign law. To attain a similar result, courts have, in absence of proof of foreign law, presumed it to be the same as the *lex fori*. *Linton* v. *Moorehead*, 209 Pa. St. 646. This presumption may well be applied to jurisdictions like England and those American states which have always been under an English system of law. See *Norris* v. *Harris*, 15 Cal. 226. But it cannot logically be applied to such foreign countries as France or Turkey, since it is judicially known that the common law is not there in force. *Re Hall*, 61 N. Y. App. Div. 266. See *Aslanian* v. *Dostumian*, 174 Mass. 328. But a recent case shows a somewhat far-fetched refinement. A Missouri court refused to presume that the common law existed in Kansas, on the theory that Kansas was not carved out of English territory, but was acquired from France. See *Mathieson* v. *St. Louis & S. F. Ry. Co.*, 118 S. W. 9 (Mo.). The rule laid down by the principal case is simple and capable of universal application, but it overlooks the fact that the defendant's liability depends entirely upon Cuban law. *Slater* v. *Mexican National R. R. Co.*, 194 U. S. 120. The plaintiff, not having established this liability, has made out no case. For a further discussion of this subject, see 19 HARV. L. REV. 401–417.

HOMESTEAD — CONTRACT TO CONVEY SIGNED BY HUSBAND ALONE. — The defendant's wife refused to join in a conveyance of the homestead pursuant to a contract entered into by the defendant but not signed by herself. The defendant then refused to convey his interest. By the constitution of Michigan deeds of homesteads not signed by the wife are void. *Held*, that the defendant is not liable in an action at law for breach of contract. *Lawrence* v. *Vin Kemulder*, 122 N. W. 88 (Mich.).

Specific performance manifestly cannot be had against a husband who is incapable alone of making a valid conveyance. *Mundy* v. *Shellaberger*, 153 Fed. 219. But inability to perform is not of itself an excuse for a breach of contract. Thus a person who obligates himself to convey land over which he has not the power of disposal, is ordinarily answerable in damages. *Carr* v. *Dooley*, 19 N. Y. Misc. 553. And a husband who covenants to give perfect title and is prevented from so doing by his wife's dower right, is liable upon his covenant. *Drake* v. *Baker*, 34 N. J. L. 358. The principal case can be supported only on the ground of public policy. The argument is that the liability of the husband upon his contract operates to coerce the wife to sign the deed against her better judgment. *Weitzner* v. *Thingstad*, 55 Minn. 244. But ordinarily, freedom from liability would be used by the husband simply as a means of escape from an unprofitable bargain. Hence it seems wiser to make no exception to the usual rule of contracts. *Eberling* v. *Deutscher Verein*, 72 Tex. 339.

INSURANCE — INSURABLE INTEREST — WHAT CONSTITUTES INSURABLE INTEREST IN A LIFE. — *Held*, that the relation of husband and wife *per se* gives to the husband an insurable interest in the life of the wife. *Griffiths* v. *Fleming*, 100 L. T. R. 765 (Eng., Ct. App., Mch. 2, 1909). See NOTES, p. 57.

INSURANCE — INSURABLE INTEREST — WHETHER NECESSARY IN ASSIGNEE OF LIFE POLICY. — X took out a policy of insurance on his own life. Later, he assigned it to Y, who had no insurable interest in life of the assured. On the death of X the insurer paid the money due into court and filed a bill of interpleader against Y and X's administrators. *Held*, that the assignee can recover only what he actually paid for the assignment and as premiums. *Russell* v. *Grigsby*, 168 Fed. 577 (C. C. A., Sixth Circ.).

A distinct conflict of authority exists as to the validity of an assignment of a life policy to one having no insurable interest in the life. Most jurisdictions hold that such a policy, valid in its inception, is merely a chose in action which modern commercial needs require to be freely assignable as such. *St. John* v. *American Mutual Life Insurance Co.*, 13 N. Y. 31; *Gordon* v. *Ware National Bank*, 132

Fed. 444. And this view is thought to be supported by the generally accepted theory that if there is an insurable interest when the policy is taken out, its continuance is not necessary. See *Mutual Life Insurance Co.* v. *Allen*, 138 Mass. 24. Even these jurisdictions, however, would probably declare invalid an assignment of a policy to one without interest made so soon after the issuance of the policy as to evidence an intent to circumvent the requirement as to insurable interest on the part of the assured. *Steinback* v. *Diepenbrock*, 158 N. Y. 24. Logically, it would seem that the grounds of public policy requiring an insurable interest to support a life policy, are equally present whenever the policy is assigned. *Warnock* v. *Davis*, 104 U. S. 775. It is on this ground that a few courts hold an assignment to one without insurable interest absolutely void, or, as in the principal case, allow the assignee to recover no more than actual reimbursement. *Missouri Valley Life Insurance Co.* v. *Sturges*, 18 Kan. 93; *Culver* v. *Guyer*, 129 Ala. 602.

INSURANCE — NATURE AND INCIDENTS OF INSURANCE CONTRACTS — ASSIGNABILITY OF CASH SURRENDER VALUE. — A life-insurance policy was payable to the wife of the insured, but contained a provision that at the end of certain specified periods the insured might surrender it and receive its cash value. Shortly before the end of such a period the insured assigned the policy. The assignee demanded the cash value at the proper time, but at the instance of the insured the company refused to pay it. *Held*, that the power to collect the cash value is not assignable. *Moser* v. *Connecticut Mutual Life Insurance Co.*, 119 S. W. 792 (Ky.).

Where the wife of the insured is named as beneficiary, her interest in the policy cannot be defeated by its voluntary assignment to the insured's assignee in bankruptcy. See *Central Bank of Washington* v. *Hume*, 128 U. S. 195, 206. In Kentucky this exemption from a bankrupt's assets has been extended to a cash surrender value payable to the insured himself at his own option. *Townsend* v. *Townsend*, 127 Ky. 230. The main case applies the same principle to an assignment for consideration. The theory of the Kentucky court is that the right to surrender the policy for cash is a power which must be exercised by the insured in person. It is well settled that a power affecting another's interest, and involving confidence and discretion, cannot be delegated. *Ingram* v. *Ingram*, 2 Atk. 88. But where the only need for discretion is in deciding whether the power shall be executed, the appointment of another to carry it out has been sustained as amounting to an informal execution of the power. *Sergison* v. *Sealy*, 9 Mod. 390; *Crooke* v. *County of Kings*, 97 N. Y. 421. In the main case, the sole discretionary power of the insured appears to have been in deciding whether the policy should be surrendered, and the assignment was practically an exercise of that power. Accordingly it would seem that the assignee should have received the cash value.

INTERSTATE COMMERCE — CONTROL BY STATES — REQUIREMENT TO FILE CERTIFICATES. — Suit was brought in Kansas upon a note given to an Illinois corporation, for goods shipped from Illinois into Kansas pursuant to an order taken by a drummer in the latter state. A Kansas statute forbade any foreign corporation doing business in the state, from maintaining an action without having obtained a certificate that certain statements had been filed. *Held*, that the statute is not unconstitutional. *Wilson-Moline Buggy Co.* v. *Hawkins*, 101 Pac. 1009 (Kan.).

Any attempt by a state legislature to interfere with the sale of articles within the state by a foreign corporation, is unconstitutional as an interference with interstate commerce. *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489. The question of such interference frequently arises under the common statutory requirement that a corporation, "doing business" within the state, must have an authorized agent therein, and must file certain certificates. Such a transaction as that in the principal case is usually held not to be "doing business" under the statute. *Cooper Mf'g Co.* v. *Ferguson*, 113 U. S. 727. But if the statute does apply to such a transaction, it has been held unconstitutional. *Murphy Varnish*